

REMARKS

The phrase "preferably" has been removed from claims 1 and 3.

Claims 1, 3 and 4 have been amended as suggested by the Examiner with respect to parentheticals.

Claim 1 has been further amended to incorporate the subject matter of claims 9 and 11, which have been canceled, without prejudice.

Claim 1 has additionally been amended to specify that the composition is substantially free from animal fat. Support for this subject matter may be found in the Specification at page 5, lines 16-17.

Care has been taken not to introduce any new matter.

The Present Invention

The present invention relates to dry and/or particulate savory food compositions that are selectively low in triglycerides of trans-unsaturated fatty acids. The savory compositions are low in trans-unsaturated fats but without lauric acid often used in margarine which leads to off-flavors.

Double Patenting

Claims 1-10 of the current Application were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5 and 10-19 of copending Application No. 10/535,488.

Claims 1, 2 and 5 of the current Application were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 7, 11 and 12 of copending Application No. 10/587,730.

A Terminal Disclaimer is enclosed with this Amendment.

35 U.S.C. § 112

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 2, the phrase "preferably" renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). The phrase "preferably" has been removed from claims 1 and 3. Claim 2 is dependent on claim 1, however, it does not use the phrase "preferably." This rejection has been rendered moot by amendment of claim 1.

Regarding claims 1, 3 and 4, the use of the parenthesis to further define H3 and H2U renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Examiner suggests stating the definition as part of the claim and placing the abbreviations H3 and H2U in parenthesis. Claims 1, 3 and 4 have been amended as suggested by the Examiner. This rejection has been obviated by the claim amendments.

35 U.S.C. § 103

Claims 1-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cain, et al., US 5,718,938, in view of Bodnar, et al., US 2002/0098275 and Cain, et al., US 5,756,143 (hereinafter Cain '143).

According to the Office Action:

Cain discloses a bakery fat composition comprising a mixture of triglycerides, column 1, lines 35-48. Cain's invention contains mixtures of saturated fatty acids having triglycerides with 16 or more carbon atoms and triglyceride fatty acids with 16 or more carbon atoms with cis-unsaturated fatty acids, column 2, lines 18-43. The invention contains 5-80 wt % of fat, 0-50 wt. % of water, 0-4 wt % of salt, which may be used as a spice, and 0-15 wt. % of leavening agents. *Id.* Cain describes a triglyceride ingredient B that is the same ingredient as Applicants H3 and an ingredient A that is the same as Applicants H2U, column 3, lines 16-31. These ingredients are combined to form a fat mixture containing 10-75 wt. % H3 or S3 and 0-90 wt. % H2U or SUS. *Id.*; column 4, line 62 – column 5, line 34. Therefore, H3+H2U may incorporate up to 100 wt. % of the fat ingredient. Also, the percentages of H and U, and the ratio of H3:H2U may be any varying range within 10-75 wt. % H3 or S3 and 0-90 wt. % H2U or SUS of the fat composition. See MPEP § 2144.05(II)(A).

Further according to the Office Action:

Cain also teaches the use of palm oil and palm oil stearin as the triglyceride mix, column 4, lines 18-29; column 4, line 62 – column 5, line 34. Since palm oil is 35-45% palmitic acid (Encyclopedia Britannica), Cain's fat composition may also contain between 30-70 wt % palmitic fatty acid. Cain teaches that the composition is blended until it becomes a homogenous mass and then it is combined with additional ingredients to create dough. Cain does not specifically teach the addition of herbs, spices or vegetable powder to the homogenous mass of fat mixture in order to create flakes, cubes or particulate broths for soups or sauces.

To cure the vast deficiencies of Cain, Bodnar is cited in the Office Action:

Bodnar discloses an edible water-in-oil microemulsion for use in food products which comprises diglycerides, triglycerides and monoglycerides. [004];[0027]. The emulsion may comprise from 40-97 wt. % in oil, 0.1 to 25 wt. % water and other optional ingredients [0017]. A desirable outcome of the invention is the addition of water soluble components such as proteins, salts, sugars, sweeteners, flavoring agents, nutrients, and

seasonings to the aqueous phase of the emulsion [0004]; [0024]. In addition, it is preferred that the emulsion comprises large amounts of salt [0025].

Further according to the Office Action:

Cain '143 discloses a blend of long-chain triglycerides and saturated fats, column 3, line 25 – column 5, line 20. Cain '143's invention may be used for all types of food products, including spreads, margarine, bakery products, sauces, soups and dressings. Cain's invention includes the addition of salt. The low percentage of salt in Cain's invention implies that the salt is used as a flavoring spice instead of as a main component in the matrix emulsion; however, Bodnar teaches the use of the aqueous phase of the emulsion to introduce spices and flavoring agents, such as large amounts of salt. Cain's disclosed triglyceride fatty acid composition includes an aqueous phase that may be used to add large amounts of salt, spices or herbs to the triglyceride emulsion. Since a skilled practitioner in the art may vary percentages within a range to achieve a desired results, Cain's emulsion containing from 0-50 wt. % of water may result in a very pasty product like margarine or very dry product like bouillon or powder. See MPEP § 2144.05(II)(A).

Therefore, according to the Office Action:

it would have been obvious for a person of ordinary skill in the art at the time this invention was made to add large amounts of salt, spices, herbs and additional water soluble flavorings, as disclosed by Bodnar, to an emulsion containing long-chain triglycerides of fatty acids, salt and water, such as Cain's, to create a low moisture paste, bouillon, particulate or broth in any desired shape to produce a soup or sauce, as taught by Cain '143. See MPEP § 2144.05(IV)(B).

Applicants respectfully traverse.

The present applications uniquely provides a dry savoury food composition (e.g. bouillon or culinary cube, and soup- and sauce- mixes) which is low in trans-unsaturated fatty acids. None of the cited references alone or in combination relates to or makes predictable to one skilled in the art the inventive compositions. The present invention relates to dry savory foodstuffs. Instead, the cited primary reference relates to batters and doughs containing such batters for manufacture of e.g. puff pastry, cookies, and cakes. Such baked goods are usually non-savory applications (usually sweet) and usually not dry. This, a person of skill in the relevant art of dry savory foodstuffs like

bouillon cubes, seasoning cubes, mixes for soup and sauces, would not find it predictable to come up with the present invention based on the cited art.

Cain, U.S. 5,718,938 discloses manufacturing a batter, a dough, and bakery products such as cookies and cakes with lower than normal SAFA (saturated and trans fatty acid residues). Although the formulations of Cain '938 can contain 0-4 % salt, that does not make them savory applications in the sense of the present application, as the formulations in Cain '938 do not contain 0.1-50% vegetable pieces and/or monosodium glutamate.

Additionally, Cain '938 discloses the use of a fat blend (see bottom col. 6 containing an S3 (similar to H3 in the present application) of 7.6%, and S2U (similar to H2U in the present application) of 33.5%. Thus, H3 + H2U in Cain '938 equals 41.4%, whereas the present application claims for such fats at least 55%.

The secondary references fail to cure the deficiencies of Cain '938 as they are directed to different fat systems. A person of skill in the art would not find it predictable to come up with the present invention in particulate matter as claimed. The cited references do not disclose such particulate matter. Applicants respectfully submit that in order to manufacture a fat-containing matter in particulate form, which also should perform well in terms of e.g. fat-staining, the fat will need to meet certain requirements in terms of melting behavior which are entirely different from the melting behavior fats need to perform in batters and doughs. Thus, a person of skill in the relevant art would not find it predictable to come up with the savory particulate composition according to the present invention on the basis of the cited art.

Accordingly, the claims are deemed to be in condition for allowance.

CONCLUSION

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks. It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

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